

March 15, 2021

The Honorable Robert Olson
Statehouse, Room 236A-E
Topeka, Kansas 66612

Dear Senator Olson:

SUBJECT: Fiscal Note for HB 2196, as Amended

In accordance with your request, the following fiscal note concerning HB 2196, as amended, is respectfully submitted.

Substitute for HB 2196, as amended by the House Committee of the Whole, would hold employers harmless for fraudulent or improper claims of unemployment benefits. Additionally, employers would not be charged for any benefits paid that were determined to be fraudulent or improper. Employers would not be required to reimburse the state for claims identified as fraudulent by the employer. The Department of Labor would be required to immediately and fully credit an employer's account for any benefits that were determined to be fraudulent or provided in error. Reimbursing employers would be refunded immediately for reimbursements made to the state for any claims or benefits paid on or after March 15, 2020, that are fraudulent. The Department of Labor would be required to review all reimbursing employer accounts and credit any employer for benefits paid by fraud or in error that were charged to the employer's account and not recovered through normal recovery efforts. The time limitation on disputed claims or appeals in current law would not apply to cases of fraud or benefits paid from March 15, 2020 through December 31, 2022.

The bill would require the Department of Labor to review all available information regarding improper unemployment benefit payments for the state for the time period of March 15, 2020, through December 31, 2022. Within 60 days of the information becoming available, the Department of Labor would be required to certify to the Department of Administration any amounts for improper payments. The bill would require \$450.0 million or the maximum amount available, as determined by the Director of the Budget, to be transferred from special revenue funds to the Unemployment Insurance Trust Fund during FY 2021 and FY 2022. The transfer would be made up of monies identified by the Director of the Budget from unencumbered coronavirus relief

funds that may be spent at the discretion of the state and provided by federal legislation enacted in response to the COVID-19 pandemic.

If the full \$450.0 million transfer of federal coronavirus relief funds to the Unemployment Insurance Trust Fund is not made, there would be no adjustments to employer contributions related to the solvency of the Unemployment Insurance Trust Fund. If the \$450.0 million transfer is not made for any reason, the Department of Administration would be required to transfer to the Unemployment Insurance Trust Fund the total amount of fraudulent and improper payments certified by the Department of Labor from the State General Fund or another fund determined by the Governor and approved by the State Finance Council. If the Department of Labor determines the amount of fraudulent and improper payments is greater than \$450.0 million, the Department would be required to certify the amount of the shortfall, which would be transferred from the State General Fund to the Unemployment Insurance Trust Fund in five equal installments on or before July 15 of FY 2024 through FY 2028. The Governor would be permitted to direct that these transfers come from different funds with approval from the State Finance Council. If the Department of Labor determines the amount of fraudulent and improper payments was less than \$450.0 million, the Department would be required to transfer from the Unemployment Insurance Trust Fund to the State General Fund the difference between the original transfer and the actual amount of fraudulent and improper payments. The returned funds would be designated for COVID-19 related purposes. The bill would provide for any amount of improper payment recovered by the Department of Labor to be deposited in the State General Fund.

Any federal funds for the Unemployment Insurance Trust Fund received after January 1, 2021, in response to the pandemic would be subject to determination by and an act of the Legislature. Any federal unemployment insurance benefit program established as a result of COVID-19 or any pandemic would not be continued after the ending date of the federal program through the use of state unemployment insurance fund contributions made by employers.

The bill would create a new standard rate schedule, new solvency rate schedules, new credit rate schedules and a new fund control table for Rate Year 2022 and subsequent calendar years for the calculation of employment contributions to the Unemployment Insurance Trust Fund. The bill would also establish a new calculation for the reserve fund ratio. The Department of Labor would be required to post Unemployment Insurance Trust Fund computations and data on the Department's website. The data must include information from the previous 20 fiscal years and for FY 2022 and each subsequent fiscal year.

The bill would create the Unemployment Compensation Modernization and Improvement Council. The 13-member Council would include employers, employees, members of the Legislature, and the Secretary of Labor or the Secretary's designee. Members of the Council would be eligible to receive compensation for costs associated with a member's service on the Council. Member compensation and expenses would be paid by the Department of Labor from the Employment Security Administration Fund or the Department's State General Fund account. The Secretary of Labor would be required to appoint an Executive Secretary of the Council. The Council would be required to examine and recommend changes to the unemployment compensation system and claims filing process. Using an independent firm, the Council would be

required to conduct an audit regarding the effects of fraudulent and improper claims made during March 15, 2020, through March 31, 2022, on the Department of Labor and the Unemployment Insurance system. The independent firm would be required to submit a preliminary report by May 1, 2022, and a final report by September 1, 2022.

The bill would also require the Department of Labor, with the assistance of the Council, to develop a strategic staffing plan that accounts for substantial increases or decreases in the number of claims for benefits. The initial staffing plan must be developed no later than nine months after the first meeting of the Council. The Department of Labor, with the assistance of the Council, would be required to create on the Department's website a list of all of the points of contact for unemployment insurance questions or claims.

The bill would require a new unemployment insurance system to be deployed no later than December 31, 2022. The bill specifies the required functions, features, and benefits of the system, including the use of cross-checking programs to verify new and active unemployment insurance claims. The Department of Labor would be required to provide annual updates to the Council and the Legislative Coordinating Council on the status and progress of the new unemployment insurance system.

In response to the COVID-19 pandemic, the duration of unemployment benefits was extended to 26 weeks. Under Substitute for HB 2196, as amended by the House Committee of the Whole, for the weeks commencing on and after April 1, 2021, claimants would be eligible to receive benefits for:

1. A maximum of 16 weeks if the Kansas unemployment rate is less than 5.0 percent;
2. A maximum of 20 weeks if the Kansas unemployment rate is at least 5.0 percent but less than 6.0 percent;
3. A maximum of 26 weeks if the Kansas unemployment rate is at least 6.0 percent.

The bill would shorten the time an individual is to be disqualified from receiving benefits for fraudulent or misleading statements from five years to two years for a first occurrence and add a lifetime disqualification for a second occurrence. The Department of Labor would be required to develop and implement procedures to address claimants who refuse to return to suitable work or refuse to accept an offer of suitable work without good cause. The bill would require the Department of Labor to notify the Department of Children and Families (DCF) once a claimant has become employed to allow DCF to determine the claimant's eligibility for state or federal benefits provided by DCF.

On or before January 31 of each year, the Department of Labor would be required to submit a report to the House Committee on Commerce, Labor and Economic Development regarding the current and projected number of claims; the amount of employer contributions; and the current and projected balance of the Unemployment Insurance Trust Fund.

The Department of Labor and the Department of Commerce would be required to jointly establish and implement the My Reemployment Plan program. The program would provide enhanced services to Kansans receiving unemployment insurance benefits. The Department of Labor and the Department of Commerce would also be required to jointly implement a work skills training or retraining program in collaboration with the KANSASWORKS program. The Department of Labor or the Department of Commerce would be required to seek or use any available federal funds for the work skills training or retraining program. Unemployment insurance claimants that fail to participate in reemployment and work skills training programs after having been requested to do so by the Department of Labor would be disqualified from receiving unemployment benefits until they demonstrate compliance. The bill would permit benefits to be continued or reinstated upon a showing of good cause by the claimant for failure to participate. The Department of Labor would be required to provide a report to the 2022 Legislature on the status of the My Reemployment Plan program and the work skills training or retraining program.

The bill would expand the Employment Security Board of Review from three members to six members until June 30, 2024. No more than four members of the new six-member board could belong to the same political party. After June 30, 2024, the Board would return to three members. The bill would authorize the Board to sit in panels for the purposes of hearing and determining cases. A panel would consist of three members. The bill would amend provisions regarding member term limits. The Board or panel of the Board would be authorized the discretion to deny a request for an in-person hearing in the absence of good cause shown by the party requesting the hearing.

The Department of Labor would be required to create and manage a promotional campaign for the Shared Work Unemployment Compensation Program. The bill would adjust the reduction limits of the normal weekly hours of work for employees under a shared work plan. The bill would also add services performed by a petroleum landman on a contractual basis to be covered by unemployment laws. The bill would become effective upon publication in the *Kansas Register*.

Substitute for HB 2196, as amended by House Committee of the Whole, would authorize an aggregate transfer of \$450.0 million from coronavirus relief funds to the Unemployment Insurance Trust Fund with the State General Fund, or other funds identified by the Governor, making up any shortfalls. However, recent estimates of the total amount of fraudulent or improper unemployment payments in the state have varied widely. The Department of Labor estimates fraudulent or improper unemployment payments totaled \$290.0 million in calendar year 2020 while the Legislative Post Audit estimates fraudulent or improper unemployment payments totaled approximately \$600.0 million in calendar year 2020 (*Evaluating the Kansas Department of Labor's Response to COVID-19 Unemployment Claims (Part 1)*, Legislative Post Audit, February 2021). Because of the differing estimates, the actual amount that would be transferred to the Unemployment Insurance Trust Fund, and the potential effect on the State General Fund, is currently unknown. The Department of Labor will be working towards identifying the amount of fraudulent or improper payments in the coming months utilizing guidance from the Executive Branch and the Legislative Branch.

The Department of Labor indicates the bill would affect contributions to the Unemployment Insurance Trust Fund. The Department uses a measure called the Average High Cost Multiple (AHCM) to assess the solvency of the Fund. The AHCM is the number of years benefits could be paid based on the average of the three highest years of benefit payments over the last 20 years. An AHCM of 1.0 would mean the Unemployment Insurance Trust Fund would have enough reserves to pay one year of benefits. To estimate the potential fiscal effect on revenue to the Unemployment Insurance Trust Fund, the Department looked at scenarios for various AHCMs. If the AHCM was 0.20, the Department estimates the Unemployment Insurance Trust Fund would receive \$146.7 million less revenue under HB 2196 compared to current law. If the AHCM was 0.50, the Department estimates the Fund would receive \$131.1 million less revenue. Lastly, if the AHCM was 0.70, it is estimated that the Fund would receive \$115.6 million less revenue.

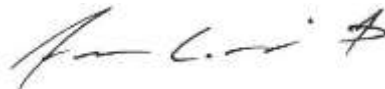
The Department of Labor estimates that upgrading the unemployment insurance system would cost \$46.7 million from all funds, including \$9.6 million from the State General Fund. The all funds figure includes \$42.7 million for design and implementation and \$4.0 million in annual maintenance costs. The total cost includes \$27.8 million in FY 2021, all from special revenue and federal funds, and \$18.9 million in FY 2022, which includes \$9.6 million from the State General Fund and \$9.3 million from special revenue and federal funds. Of the total cost for modernizing the unemployment insurance system, approximately \$37.0 million from special revenue and federal funds is included in the Governor's budget. The revised estimate from the Department would ensure the upgraded unemployment insurance system would be ready for deployment before December 31, 2022, as required in the bill.

The Department of Labor estimates the bill would require additional expenditures of \$13,324 from federal funds and .75 FTE positions in FY 2021 and \$741,955 from federal funds and 12.00 FTE positions in FY 2022. For FY 2021, the amount is for the costs of increasing the Employment Security Board of Review from three members to six members for one quarter of the fiscal year. For FY 2022, the amount includes \$125,800 for 1.00 FTE position to support the Unemployment Compensation Modernization and Improvement Council (\$82,800 for salaries and wages plus \$43,000 for other operating expenditures); \$499,650 for 7.00 FTE positions to conduct research on fraud (\$356,650 for salaries and wages and \$143,000 for other operating expenditures); \$63,210 for 1.00 FTE position for the shared work program (\$45,210 for salaries and wages and \$18,000 for other operating expenditures); and \$53,295 for 3.00 FTE positions from increasing the Employment Security Board of Review to six members (\$45,000 for salaries and wages and \$8,295 for other operating expenditures).

The Department of Labor indicates that it has broad authority to implement work search requirements as required by federal law for receipt of unemployment insurance benefits. Additionally, the Department of Labor and the Department of Commerce currently collaborate on various reemployment services and activities. However, the bill would require extensive additional activities on the part of the Department of Labor that are not currently performed. The bill would likely require an unknown number of additional staff as well as extensive information technology upgrades to accomplish the requirements of the legislation.

The Department of Commerce estimates it would require additional expenditures of \$94,300 from the State General Fund in FY 2022. This amount includes \$74,250 for the salary and wages of 1.00 FTE position and \$16,050 for other operating expenditures. The new position would be responsible for implementing the work skills training program, conducting annual reporting requirements and collaborating with the Department of Labor. The amount also includes \$4,000 for programming costs to allow data interface between the Department of Commerce's data system and the Department of Labor's data system. The Department of Revenue indicates the bill would not have a fiscal effect on agency operations. The Department of Revenue currently has a memorandum of understanding with the Department of Labor for any exchanges of tax data that may be needed. Except as noted above regarding the unemployment insurance system, any other fiscal effect associated with Substitute for HB 2196, as amended by the House Committee of the Whole, is not reflected in *The FY 2022 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget